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ABSTRACT

This guide summarizes procedural safeguards for children with disabilities and their parents. It was compiled from the Individuals with Disabilities Education Act, the Missouri State Plan for Special Education, local (Missouri) district Compliance Plans for Special Education, and the Family Educational Rights and Privacy Act of 1974. Rights and safeguards are outlined and explained for the following topics: (1) written notice and consent, (2) independent evaluation, (3) access to records, (4) discipline, including alternative educational settings, (4) limitation on reimbursement for private school placement by parents, (5) due process hearing procedures, including a resolution conference (optional), (6) impartial due process hearings -general aspects, (7) impartial due process hearings--the 3-member hearing panel, (8) child complaints, (9) civil action, and (10) attorney's fees. (DB)

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Procedural Safeguards for Children and Parents

as required by Public Law 94-142,
The Individuals with Disabilities Education Act
(IDEA)

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Written Notice and Consent

You must be given written notice a reasonable time before the district: (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. This notice will include the following information: (1) a description of the action proposed or refused, and an explanation of why the agency proposes or refuses to take the action, (2) a description of any options the district considered and the reasons why any of those options were rejected, (3) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal, (4) a description of any other factors relevant to the proposal or refusal, and (5) a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained; and (6) sources for parents to contact to obtain assistance in understanding their procedural safeguards.

In addition, the notice must be written in language understandable to the general public, in language you understand and provided in your native language or your primary mode of communication unless it is impossible to do so.

If your native language or primary mode of communication is not a written language, the district must document what steps were taken to insure that the notice was translated orally or by other means to you in your native language or primary mode of communication, and that you understand the content of the notice. The district will have to document in writing that this notice was provided.

A copy of the procedural safeguards shall be given to you, at a minimum (1) upon initial referral for evaluation; (2) upon notification of individualized education program (IEP) meetings; (3) upon reevaluation of your child; and (4) upon request for a due process hearing.

The district must obtain your written consent before conducting an evaluation or making an initial placement of your child in a special education program. Subsequent placements do not require consent and consent for reevaluations need not be obtained if the school district can demonstrate that it had taken reasonable measures to obtain your consent and you failed to respond. In order to obtain your consent, the district will make every effort to explain its position and hear your concerns. If you refuse to give written consent and the district feels your child requires special education services, the district must take the following steps:

(1) The district administrator will request in writing that you meet with your child's teacher and other appropriate staff to discuss their immediate concerns for your child.

(2) If you continue to refuse to give your consent, the district will provide to you in writing the following information:

(a) The need for the evaluation, or initial placement for your child;

(b) The fact that you refuse to give consent; and

(c) The fact that the district will initiate a due process hearing (3-member hearing panel) if you continue to refuse to give your consent in the case of initial evaluation or initial placement.

"Consent" means that: (1) you have been fully informed of all information relevant to the activity for which consent is sought, in your native language, or other mode of communication; (2) you understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (3) you understand that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used to determine whether a child is disabled and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

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Independent Evaluation

You have a right to an independent educational evaluation at public expense if you disagree with the evaluation conducted by the district. An "independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. The district must provide you, if you request it, information about where independent educational evaluations may be obtained. The district may initiate a hearing to show that the district's evaluation is appropriate (see "Due Process Procedures"). If the district does initiate such a hearing and the hearing decision is that the evaluation is appropriate, you still have the right to an independent evaluation, but not at public expense.

You may obtain an independent evaluation without notifying the school district of your disagreement. A copy of your district's policy regarding independent evaluations (if one exists) will be provided to you upon request. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the district uses when it initiates an evaluation. The district will respond to any independent evaluation and consider it in any decision made with respect to the identification, evaluation, or placement of your child, or the provision of a free and appropriate public education for your child. If the district disagrees with portions of the independent evaluation, it is not obligated to modify your child's program/placement based on the contested portions. Results of this evaluation may be presented as evidence at any hearing regarding your child. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Access to Records

You have the right to inspect and review all of the records, collected, maintained or used by the district regarding your child and to have them clearly explained to you. You have the right to obtain copies of the records if failure to provide copies effectively prevents you from exercising your right to inspect and review them. The district may charge a fee for copies of the records if the fee does not prevent you from inspecting and reviewing the records. The district may not charge a fee to search for or to retrieve information regarding your child. You also have the right to have your representative inspect and review the records. Additionally, the district must presume that you have authority to inspect and review records relating to your child unless the district has been advised that you don't have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

The district shall comply with a request to access records without unnecessary delay and before any meeting regarding an individualized education program or hearing related to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

Discipline: Alternative Educational Settings

1. Ten school days or less: Your child may be removed from his current placement for ten school days or less by the school district, to an appropriate interim alternative educational setting, another setting, or suspension without providing services, unless the conduct involves drugs or weapons, in which case the change may be for 45 days.
2. 45 days: Your child's placement may be changed for 45 days by the school district, to an appropriate interim alternative educational setting, if your child carried a weapon to school or to a school function or your child knowingly possessed or used illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.
3. Behavioral Assessment: On or before the end of the tenth business day of a disciplinary action exceeding 10 days, if the school district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the discipline action, the school district must convene an IEP meeting to develop an assessment plan to address that behavior. If your child already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior involved in the disciplinary action.
4. Access to Services: Any interim alternative educational setting determination exceeding ten days will be made by the IEP team, must be selected to enable your child to continue to participate in the general curriculum and to continue to receive services required by the IEP, and must include services and modifications designed to address the behavior involved in the disciplinary action so that it does not recur.
5. Manifestation Determination: No later than ten school days after the date on which the decision to remove your child from his current placement for more than 10 days as a disciplinary action, the IEP team shall determine whether there is a relationship between the child's disability and the behavior subject to the disciplinary action. If the conduct is determined unrelated to your child's disability, disciplinary procedures applicable to children

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without disabilities may be applied to your child in the same manner in which they would be applied to children without disabilities. However, in that event your child must still receive a free appropriate public education. If you disagree with a determination that your child's behavior was not a manifestation of his disability, or with any decision regarding placement in a disciplinary situation, you have the right to request an expedited due process hearing.

6. Dangerous Students: If the school district believes your child will injure himself or others, the school district has the right to obtain an expedited due process hearing. At that hearing, the hearing panel may order a change in placement to an appropriate interim alternative educational setting for not more than 45 days if the hearing panel:
   - determines the school district has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to your child or others;
   - considers the appropriateness of your child's current placement;
   - considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement including the use of supplementary aids and services; and
   - determines that the interim alternative educational setting enables your child to continue to participate in the general curriculum and continue to receive services required by his current IEP.
7. "Stay-put" under disciplinary actions: If you request a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination, your child will remain in that interim alternative educational setting pending the hearing decision or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise). If school personnel maintain that it is dangerous for the student to be in the current placement (the placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the school district may request an expedited hearing.

Limitation on Reimbursement for Private School Placement by Parents:

If you enroll your child in a private school without consent of or referral by the school district, a court or a due process hearing panel may require the school district to reimburse you for the cost of that enrollment if the school district did not offer a free appropriate public education to your child in a timely manner. However, the amount of reimbursement may be reduced or denied:

- if at the most recent IEP meeting you attended prior to removal of the child you did not inform the IEP team you were rejecting the placement proposed by the school district, and stated your concerns and intent to enroll your child in private school at public expense; OR
- if ten business days prior to the removal of your child, you did not give written notice to the school district that you were rejecting the placement proposed by the school district, stated your concerns and intent to enroll your child in private school at public expense.
- if, prior to your removal, the school district provided you a notice of intent to evaluate, but you did not make your child available for such evaluation; OR
- if there has been a court decision that your actions have been unreasonable.

Due Process Hearing Procedures - Resolution Conference (Optional)

If agreement regarding the identification, evaluation, educational placement or free appropriate public education for your child cannot be reached through discussions, you will be advised in writing of the district's position which will clearly indicate the action which they propose or refuse to initiate or change. After you receive this notice, you may send a written request to the district for an informal resolution conference with district administrators OR you may waive the right to resolution conference and request, in writing, the Missouri Department of Elementary and Secondary Education empower a 3-member hearing panel. Such request must follow the requirements explained below under "Impartial Due Process Hearings - 3-Member Hearing Panel."

The resolution conference will be conducted and a decision rendered within 10 days of receipt of your request unless you agree to a later time. The conference must be held at a time and place that is convenient to you. It will be conducted by the school district superintendent or someone designated by the superintendent. The resolution conference is informal. If you waive your right to a resolution conference, and request a 3-member hearing panel by contacting the Missouri Department of Elementary and Secondary Education's Special Education Division in writing, the State will proceed with the empowerment of the panel. During the time period in which the panel is being empowered, the district has two options: (1) conduct the resolution conference, or (2) waive the resolution conference. If the district chooses to conduct the resolution conference, despite your waiver of the right to a resolution conference, you will be advised of the district's finding(s).

At the resolution conference:

(1) The district will tell you about and permit you to review all of the information it has about your child.

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(2) The district will fully explain to you each reason for the action it proposes or refuses.

(3) You or your representative may present any information you have which pertains to the proposed action.

(4) Questioning of witnesses shall be permitted.

Impartial Due Process Hearings - General

You or the district may initiate a due process hearing at any time you do not agree with any action proposed or refused concerning the identification, evaluation, reevaluation, educational placement or the provision of a free appropriate public education for your child. The Missouri Department of Elementary and Secondary Education shall inform you of any free or low-cost legal and other relevant services available in the area if you request it or if you or the district initiates a hearing. Except in the case of an expedited hearing stemming from a disciplinary action, the hearing panel must reach its decision and mail a copy of the decision to all parties within 45 days of the date of receipt of request for the due process hearing, unless the chair of the hearing panel grants an extension at the request of either party. In an expedited hearing, the process will be completed in 10 business days.

The Missouri Department of Elementary and Secondary Education will provide you a list of the persons who serve as hearing officers, including a statement of the qualifications of each of these persons, upon your request.

During the period of time pending an administrative or judicial proceeding regarding a complaint, the child involved in the complaint must remain in his/her present educational placement, except as provided above under the Discipline section, unless the district and the parents agree otherwise. If the complaint involves an application for initial admission to public school, the child, with the consent of the parent, must be placed in the public school program until the completion of all proceedings.

Impartial Due Process Hearings - 3-Member Hearing Panel

If you decide to proceed with the resolution conference and a satisfactory agreement is not reached through the resolution conference conducted by the district, you may appeal to the Missouri Department of Elementary and Secondary Education by requesting, in writing, a 3-member hearing panel. The written request for a due process hearing can be mailed or faxed to the Missouri Department of Elementary and Secondary Education:

MO DESE
P.O. Box 480
Attention: Legal Services/Special Education
Jefferson City, MO 65102
Fax: (573) 526-4404

The written request shall include Notice of: the child's name; the child's address; the name of the school district that the child is attending; a description of the nature of the problem including facts relating to such problem; and, your proposed resolution of the problem if known. The Missouri Department of Elementary and Secondary Education has a form you can use to provide this information. To request the form, call the Special Education Division, Legal Services Section, at (573) 751-0602, or RELAY MISSOURI 1-800-735-2966 (Telecommunication device for the Deaf). If you have waived the resolution conference and wish to proceed directly to a 3-member panel, the Missouri Department of Elementary and Secondary Education will honor that request and follow the procedures explained below:

1. Mediation will be offered to both you and the school district, and if both parties agree to try mediation you will be given a list of trained mediators to mutually agree upon.

a. A mediation session will be scheduled within 15 days of the agreement to mediate, and mediation will be completed within 30 days of the agreement to mediate.

b. Both you and the district have the right to end the mediation at any time.

c. Both you and the district will receive a copy of the written agreement reached as a result of mediation.

d. Both you and the district can each be accompanied by up to three persons. Any additional persons must be by mutual agreement.

e. Neither you nor the district may bring an attorney to the mediation session.

2. Form the 3-member panel within 15 days of receipt of your request. One member will be selected by you, one by the district and one will be selected by the Missouri Department of Elementary and Secondary Education from a list of contract attorneys, and will serve as the Chair. If you do not successfully select your panel member within 10 days, the department will select the panel member. No member of the panel:

a. can have a personal or professional interest which would conflict with his/her objectivity; or

b. can be an employee of the district or any public agency involved in the education or care of the child. A person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

3. The panel will have 45 days from the date of the state's receipt of the written due process request to set the date and location of the hearing, give notice to all involved, conduct the hearing and render and mail findings and decision to you and the board of education in writing.

At the 3-member panel, you and the district both have the right:

(1) to be represented by legal counsel and by individuals with knowledge or training in problems of children with disabilities;

(2) to present evidence, cross-examine witnesses and compel attendance of witnesses;

(3) to prohibit the introduction of evaluations and recommendations based on the evaluations which have not been disclosed to you at least 5 working days before the hearing;

(4) to obtain a written or at the option of the parents, electronic verbatim record of the hearing;

(5) to obtain written, or at the option of the parents, electronic findings of fact and decisions of the hearing (copies, with personally identifiable information deleted, will be provided to the State PL 94-142 Advisory Panel and made available to the public);

Additionally, at the 3-member panel, you have the right:

(1) to have the child present who is the subject of the hearing; and

(2) to open the hearing to the public.

Note: A hearing officer may grant specific extensions of time beyond the periods stated, at the request of either party. Each hearing must be conducted at a time and place which are reasonably convenient to the parents and child involved.

Child Complaints

If you believe the district has violated a state or federal regulation implementing IDEA, you may file a child complaint with the Missouri Department of Elementary and Secondary Education. Your complaint will be investigated and resolved within 60 days.

Civil Action

If you or the district do not agree with the hearing decision, you may appeal the findings and decisions in either state or federal court. A hearing decision is final unless a party to the hearing appeals.

Attorney's Fees

In any action or proceeding brought under Part B of the IDEA, the court may award reasonable attorneys' fees to the parents or guardians of a child or youth with disabilities who is the prevailing party.

This information regarding procedural safeguards has been compiled from the Individuals with Disabilities Education Act (IDEA), the Missouri State Plan for Special Education, your local district's Compliance Plan for Special Education, and the Family Educational Rights and Privacy Act of 1974 (FERPA).

Missouri Department of Elementary and Secondary Education
November 1997